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RELIGIOUS VOICES IN BROADCASTING

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Federal Communications Commission
Office of the Secretary

The Honorable Kevin Martin
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Chairman Martin:

We read with great interest the letter from the various tax groups on the issue of multicast must-carry and feel compelled to respond to it.

While we understand that cable is a financial backer of many of the entities represented on the letter, we are disappointed that the issue was mischaracterized in a manner that would lead the reader to determine that a digital multicast must-carry mandate will be more burdensome on cable operators and unconstitutional. Let us elaborate:

In 1997, the Supreme Court upheld the must-carry provision that was included in the 1992 Cable Act based on the three prevailing themes: (1) it preserved the benefits of free, over-the-air local broadcast television, (2) it promoted the widespread dissemination of information from a multiplicity of sources, and (3) it promoted fair competition in the market for television programming. The current media environment would further substantiate these concepts.

Must-carry was established in 1992 when cable, which at that time wired 65% of all television homes in the country, was systematically refusing to carry any broadcast channels except for ABC, NBC and CBS. Cable and the "Big 3" networks reasoned that as cable became more dominant, it could refuse to carry any other local broadcasters, thereby, rendering them obsolete. The major networks, which were carried to all cable homes and available to the other 35% of the country over-the-air, would cover 100% of the American viewing households with no other local competition because other broadcasters would not be viable if they were denied cable access to over half the homes in their markets. Congress grew concerned with this anticompetitive practice, particularly as cable became more and more adept at developing their own channels to carry on their own cable systems. When the 1996 Communications Act passed and many media industries were deregulated, horizontal and vertical integration flourished, reinforcing the need for must-carry. To be clear, we are not editorializing on media concentration, as our group appreciates the need for the economies of scale of larger conglomerates that provide unique services. But, smaller, independent companies should also have a place in the digital media landscape. Most simply will not without multicast must-carry.

The opposing letter states that a multicast requirement "could increase the amount of property seized from cable providers by six times or more." This position is flat out incorrect. Cable has carried 6 MHz of spectrum for each broadcaster in their market since 1992. After the digital transition, broadcasters will still deliver the same amount--6 MHz--to cable for carriage

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whether broadcasters multicast or air programming in high definition. Digital technology will permit cable to compress each broadcaster's 6 MHz of spectrum to 3 MHz on their digital cable systems without degrading the signals. Therefore, broadcasters will not ask cable to carry any more spectrum than cable has allocated for each broadcaster for over a decade and, indeed, cable will recapture 50% of the spectrum they have traditionally reserved for broadcasters through compression technology. It is a clear misrepresentation to imply that any additional cable "property" will be used with multicast.

By recapturing half of the spectrum cable has allocated for broadcasters and by using digital technology in which cable will be able to place at least 12 channels of their own cable programming within the same amount of spectrum that formerly supported one channel, cable will have more than ample spectrum to build-out cutting edge services such as high-speed Internet, HDTV and Internet phone service. We encourage them to do so and to continue to develop a strong, viable business model. However, we would suggest that if cable must make content choices on the channels they carry, they decrease the large number of pornography channels they include on their systems instead of working to minimize our free, decent voices.

While it is true that cable operators "built large private infrastructures at enormous costs, and depend on private subscribers for their survival and success", it did so based on its own business model. Cable built out their digital systems market-by-market based on consumer acceptance and returns on investments. It serviced the largest markets first and moved into others when it made good business sense. Broadcasters, on the other hand, were required by an unfunded Congressional mandate to build out their digital stations by 2002—not based on a sound market-by-market business model that factored consumer acceptance or returns on investments, but an arbitrary deadline established by the federal government. In 2002, when every broadcaster was required to have both analog and digital signals running simultaneously, digital receivers were basically non-existent. So, after each broadcaster expended millions of dollars to build digital stations to be streamed to non-existent receivers, broadcasters were also saddled with double utility and operating expenses and are now being threatened with a substantial dilution of their voice in digital television in the absence of a multicast requirement. It certainly would have been helpful to have tax groups support our cause given our circumstances.

The undersigned on this correspondence would also ask the tax group signatories to the letter of June 8, 2006 to apply the same free market litmus test to cable that they request be used to determine the multicast must-carry standard for broadcasters. In doing so, we would assume that they would ask cable to refrain from their longstanding practice of bundling their own cable channels--in essence, precluding a customer from buying HBO without the additional package of channels that are sold with the network as a package. We would expect that this group would be outraged that cable has struck deals with the major broadcast networks to carry their multicast channels sight unseen, as many have not yet developed these.

But most disappointing to our group is that the tax groups do not support multicast must-carry because it will do more to ensure an expedited digital television transition with the least cost to the federal government than any other concept that has been introduced. Since most over-the-air (non cable or satellite) television viewers are demographically older and/or minorities, most will not make the transition to digital until the very last moment, if then. They simply will not invest privately in a digital set-top box or digital television set just to receive the same programming that they currently receive. If a multicast must-carry provision is enacted, broadcasters will program their multicast channels and encourage their viewers to invest in the digital equipment to receive their new channels. Those elderly viewers who watch a disproportionate amount of religious programming and are very loyal to our stations will invest in the next generation of television, if we encourage them to do so, with the promise of more channels of religious and family-friendly shows. Support for multicast will not cost cable additional programming fees, will not place added spectrum requirements on their systems, and will save the federal government substantial outlays of subsidies to ensure a successful digital transition.

It is our hope that the FCC vote affirmatively for multicast must-carry and that this issue be cast in the balanced light that it deserves.

Thank you for your consideration of these views.

Sincerely,

Jerry K. Rose
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